

**United States Department of Labor
Employees' Compensation Appeals Board**

B.B., Appellant

and

**DEPARTMENT OF DEFENSE, DEFENSE
LOGISTICS AGENCY, Fort Belvoir, VA,
Employer**

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**Docket No. 14-1721
Issued: February 3, 2015**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

On August 4, 2014 appellant filed a timely appeal from a June 20, 2014 nonmerit decision and a February 25, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). The Board assigned Docket No. 14-1721.

Appellant, then a 33-year-old distribution process worker, filed a traumatic injury claim (Form CA-1) on April 9, 2007 alleging that she sustained a lower back injury as a result of bending down to pick up an item on her lunch break on April 4, 2007. OWCP accepted appellant's claim for low back strain on May 23, 2007. Appellant had previously filed a claim for traumatic injury under File No. xxxxxx134 for an injury to her lower back that occurred on November 28, 2005, which was accepted for disc herniation at L5-S1 and resulted in an L5-S1 laminectomy and discectomy performed on June 27, 2006.

In a report dated November 15, 2013, Dr. Paul Lin, a Board-certified orthopedic surgeon, noted that appellant had undergone several transforaminal lumbar epidural steroid injections between 2008 and 2010. These procedures were authorized by OWCP. Dr. Lin noted that a magnetic resonance imaging scan of October 26, 2013 revealed evidence of a new annular tear at L4-L5, which he stated was the primary pain generator at the time of his report. He stated, "Given [appellant's] prior history of surgery at the L5-S1 level, the new pathology seems to be

related to the increase[d] motion/stress at the adjacent level.” In a report dated December 11, 2013, Dr. Lin diagnosed her with lumbar strain, lumbar spondylosis, and lower back pain.

On December 26, 2013 appellant filed a recurrence claim (Form CA-2a) alleging a return of disability as of August 19, 2013. She returned to work on December 9, 2013.

By letter dated January 12, 2014, Dr. Tracy Prince, an osteopath, stated that appellant had experienced another acute exacerbation of her chronic low back pain, which caused her to miss work intermittently between August and December 2013. He noted that her initial back injury occurred on November 28, 2005, which resulted in a herniated disc at L5-S1. Dr. Prince wrote:

“Without the original injury in 2005, [appellant] would not have a herniated disc at L5-S1. Thus, that level would not have worsened to the point of putting pressure on the right S1 nerve root ... nor would there have been increased pressure on the L4-L5 region which has resulted in another bulging disc. As such, these episodes are clearly related to the prior work[-]related injury and should be continued to be viewed as work[-]related injuries and fall under her workers’ compensation policy.”

By decision dated February 25, 2014, OWCP denied appellant’s recurrence claim, finding that the medical evidence did not establish that she sustained a recurrence of disability causally related to the accepted April 4, 2007 employment injury. It noted that her April 4, 2007 injury was accepted for low back strain. OWCP stated that Dr. Lin’s reports contained a diagnosis of back strain, but that he also noted internal disc disruption at L4-L5 as a reason for her continued pain, whereas OWCP had not accepted this latter diagnosis as work related. It noted that Dr. Prince’s reports referenced disc herniation at L5-S1 as a cause of exacerbation of chronic low back pain, but that low back sprain was the only accepted diagnosis and that pain was not a valid diagnosis.

By form received March 24, 2014, appellant requested reconsideration of OWCP’s decision.

By decision dated June 20, 2014, OWCP denied appellant’s request for reconsideration, finding that she had not submitted new and relevant evidence.

The record on appeal indicates that File No. xxxxxx134 may contain evidence pertinent to the present claim under File No. xxxxxx080. Appellant’s claim for recurrence was denied on the basis that she had not submitted medical evidence containing a diagnosis that had been accepted by OWCP. Several of appellant’s physicians indicated that her injury on November 28, 2005 was related to her current lower back condition. While OWCP initially accepted low back strain, and not a more specific diagnosis, under File No. xxxxxx080, the reports of appellant’s physicians indicate that her disc herniation at L5-S1 may be related to her current diagnosis of back strain.

As appellant’s claim for recurrence dealt with the same bodily member of the lumbar spine, which is a part of the lower back, and as her physicians indicated that these injuries may be related to one another, medical evidence relating to the earlier traumatic injury under File No. xxxxxx134 would be relevant to the present claim for recurrence. The Board, therefore, finds

that the appeal docketed as No. 14-1721 is currently not in posture for decision. Because the record is incomplete, the Board is unable to render a fully informed adjudication of the case. OWCP procedures also require that cases should be combined where proper adjudication depends on cross-referencing evidence between files, such as when “a new injury case is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body. For instance, a claimant with an existing case for a back strain submits a new claim for a herniated lumbar disc.”¹ In the instant appeal, it appears that for a full and fair adjudication of appellant’s claim for recurrence, appellant’s claims for low back strain and disc herniation at L5-S1 should be combined. Accordingly, the case is remanded to OWCP for reconstruction and proper assemblage of the case record, to be followed by the issuance of an appropriate decision.

IT IS HEREBY ORDERED THAT the June 20 and February 25, 2014 decisions of the Office of Workers’ Compensation Programs be set aside and the case remanded for further action consistent with this order of the Board.

Issued: February 3, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees’ Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees’ Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees’ Compensation Appeals Board

¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c)(1) (February 2000). *See also J.M.*, Docket No. 13-1111 (issued July 15, 2013).